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10/749,473	12/31/2003	Kavin Du	121532	3931
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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347				SERRAO, RANODHI N.
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)
	10/749,473	DU ET AL.
	Examiner	Art Unit
	RANODHI N. SERRAO	2141

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a)  The period for reply expires 3 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-10 and 12-35.

Claim(s) withdrawn from consideration: \_\_\_\_\_

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached Response to Arguments.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_

WILLIAM VAUGHN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed 21 December 2007 have been fully considered but

they are not persuasive.

2. Applicant argued,

*It is important to note that the selected item is not available for purchase from the electronic retail network server 104. Accordingly, the electronic retail network server 104 described by Siegel cannot be considered the "second retail entity" recited in Claim 1. The "second retail entity" in Claim 1 is an entity from which "the selected item is available for purchase."*

3. The examiner points out that the electronic retail network server 104 is not interpreted as the "second retail entity." In ¶ 66 Siegel states, "By scanning the UPCs on various grocery items, the customer can create a list frequently purchased groceries.

The electronic retail network can transfer the various UPC codes to various online retailers, for example, for comparison-shopping, and the customer can subsequently purchase the items over the Internet if desired." Items are clearly available for purchase from the various online retailers, and thus an online retailer is interpreted as the "second retail entity."

4. Applicant further remarked,

*Applicants further note that Siegel does not teach or suggest that the store in which the consumer is located or the nearby participating vendors extract identifying information from an image and use that information to obtain item information (e.g., pricing) associated with the selected item. Thus, neither the store nor the nearby participating vendors can be considered equivalent to the "second retail entity" that extracts "identifying data from the image" and uses "the identifying data to obtain item information associated with the selected item," as recited in Claim 1. Additionally, there is nothing in Siegel to suggest that the*

*electronic retail network server 104 itself is equivalent to a store or a participating vendor from which the selected item can be purchased.*

5. The examiner respectfully disagrees. As stated in ¶ 66, Siegel teaches transferring UPC data to other retailers that inherently have to extract identifying data from the UPC data in order to enable the customer to find prices, comparison-shop, etc. Although Siegel does not teach extracting the identifying data from an image, Kinjo is cited to teach this limitation. Therefore, the combination teaches a "second retail entity" that extracts "identifying data from the image" and uses "the identifying data to obtain item information associated with the selected item." See below rejections.

6. Moreover, it would have been obvious to one having ordinary skill in the art to substitute the element of UPC data in Siegel with the element of image data of Kinjo to teach the claimed invention. Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396. Accordingly, since the applicant[s] have submitted no

persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claim 1, 2, 4-10 and 12-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siegel et al. (2002/0082931) and Kinjo (2003/0063575).
9. As per claim 1, Siegel et al. teaches a method for communicating information regarding a selected item available for purchase to a user present at a location of a first retail entity, the method comprising: while the user remains present at the location of the first retail entity, which first retail entity is different than a second retail entity (see Siegel et al., ¶ 71), the second retail entity: receiving UPC code from the user using an UPC scanning device, wherein the UPC code contains identifying data associated with the selected item as provided by the first retail entity (see Siegel et al., ¶ 55-56); using the identifying data to obtain item information associated with the selected item, wherein the selected item is available for purchase from the second retail entity (see Siegel et al., ¶ 69-70); and communicating the item information from the second retail entity to the

scanning device for delivery to the user (see Siegel et al., ¶ 57-59). But fails to teach receiving an image from the user using an imaging device, wherein the image contains identifying data associated with the selected item as provided by the first retail entity; extracting the identifying data from the image. However, Kinjo teaches receiving an image from the user using an imaging device, wherein the image contains identifying data associated with the selected item as provided by the first retail entity (see Kinjo, ¶ 134); extracting the identifying data from the image (see Kinjo, ¶ 34). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Siegel et al. to receiving an image from the user using an imaging device, wherein the image contains identifying data associated with the selected item as provided by the first retail entity; extracting the identifying data from the image in order to provide an order processing apparatus and an image photographing device with which a customer can easily place an order corresponding to images displayed on a display medium (see Kinjo, ¶ 8).

10. As per claim 2, Siegel-Kinjo teach a method, further comprising outputting the item information on a visual display of the imaging device when the item information is communicated from the second retail entity to the imaging device (see Siegel et al., ¶ 70).

11. As per claim 4, Siegel-Kinjo teach a method, wherein the imaging device is a digital camera capable of communicating the image containing the identifying data (see Siegel et al., ¶ 34).

12. As per claim 5, Siegel-Kinjo teach a method, wherein the imaging device is a mobile telephone having a component for capturing an image containing the identifying data (see Siegel et al., ¶ 37).

13. As per claim 6, Siegel-Kinjo teach a method, wherein the imaging device is a portable computing device having a component for capturing an image containing the identifying data (see Siegel et al., ¶ 37).

14. As per claim 7, Siegel-Kinjo teach a method, wherein the method further comprises: compiling historical data based on a number of times an image has been received from different imaging devices, said image containing identifying data associated with the selected item; using the historical data to estimate consumer demand for the selected item; and generating a report that forecasts future purchasing activity for the selected item based on the estimated consumer demand (see Siegel et al., ¶ 64).

15. As per claim 8, Siegel-Kinjo teach a method, wherein the item information comprises rating information for the selected item associated with the identifying data (see Siegel et al., ¶ 57).

16. As per claim 9, Siegel-Kinjo teach a method, wherein the item information comprises price information for the selected item associated with the identifying data (see Siegel et al., ¶ 57).

17. As per claim 10, Siegel-Kinjo teach a method, wherein the identifying data comprises a universal product code (see Siegel et al., ¶ 46).

18. As per claim 12, Siegel et al. teaches a system for communicating information regarding a selected item available for purchase to a user present at a location of a first retail entity, wherein the system comprises a server operated by a second retail entity that is different than the first retail entity (see Siegel et al., ¶ 59), the server comprising: a subsystem configured to receive an UPC code from the user using a scanning device, wherein the UPC code contains identifying data associated with the selected item as provided by the first retail entity (see Siegel et al., ¶ 55-56); a subsystem configured to use the identifying data to obtain item information associated with the selected item available for purchase from the second retail entity, wherein the item information is obtained from at least one resource (see Siegel et al., ¶ 69-70); and a subsystem configured to communicate the item information to the scanning device for delivery to the user while the user remains present at the location of the first retail entity (see Siegel et al., ¶ 57-59). But fails to teach the server being in communication with an imaging device that is configured to capture an image of identifying data associated with the selected item; a subsystem configured to extract the identifying data from the image. However, Kinjo teaches the server being in communication with an imaging device that is configured to capture an image of identifying data associated with the selected item (see Kinjo, ¶ 132-134); a subsystem configured to extract the identifying data from the image (see Kinjo, ¶ 34). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Siegel et al. to the server being in communication with an imaging device that is configured to capture an image of identifying data associated with the selected item; a subsystem configured to extract the

identifying data from the image in order to provide an order processing apparatus and an image photographing device with which a customer can easily place an order corresponding to images displayed on a display medium (see Kinjo, ¶ 8).

19. As per claim 13, Siegel-Kinjo teach a system, wherein the resource is a Web service storing information related to the selected item (see Siegel et al., ¶ 48).
20. As per claim 14, Siegel-Kinjo teach a system, wherein the resource is a database storing information related to the selected item (see Siegel et al., ¶ 48).
21. As per claim 22, Siegel et al. teaches a computer-readable storage medium having a computer-executable component for communicating item information for a selected item available for purchase, wherein the computer-executable component is executed by a second retail entity that is different than a first retail entity and communicates the item information by: receiving UPC code from an scanning device being operated by a user present at a location of the first retail entity (see Siegel et al., ¶ 55-56), said UPC code containing identifying data associated with the selected item made available at the location of the first retail entity (see Siegel et al., ¶ 56); using the identifying data to obtain item information associated with the selected item, wherein the selected item is available for purchase from the second retail entity (see Siegel et al., ¶ 69-70); and communicating the item information to the scanning device while the user remains present at the location of the first retail entity (see Siegel et al., ¶ 57-59). But fails to teach receiving an image from an imaging device being operated by a user present at a location of the first retail entity; extracting the identifying data from the image. However, Kinjo teaches receiving an image from an imaging device being

operated by a user present at a location of the first retail entity (see Kinjo, ¶ 132-134); extracting the identifying data from the image (see Kinjo, ¶ 34). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Siegel et al. to receiving an image from an imaging device being operated by a user present at a location of the first retail entity; extracting the identifying data from the image in order to provide an order processing apparatus and an image photographing device with which a customer can easily place an order corresponding to images displayed on a display medium (see Kinjo, ¶ 8).

22. As per claim 29, Siegel-Kinjo teach a computer-readable storage medium, wherein extracting identifying data associated with the selected item from the image includes processing the image with an optical character recognition program to produce the identifying data (see Siegel et al., ¶ 67).

23. As per claim 30, Siegel et al. teaches an integrated portable apparatus for obtaining item information for a selected item available for purchase at a location of a first retail entity (see Siegel et al., ¶ 71), the apparatus comprising: an input device for capturing an UPC code of the selected item that contains identifying data associated with the selected item as provided by the first retail entity (see Siegel et al., ¶ 34); an output device for outputting item information for the selected item as obtained from a second retail entity that is different than the first retail entity (see Siegel et al., ¶ 70); a storage medium for storing said identifying data and program instructions for processing the UPC code (see Siegel et al., ¶ 36-37); and a processing unit communicatively coupled to the input device, the output device, and the storage medium, for executing

the program instructions that process the UPC code by obtaining the item information for the selected item by communicating the UPC code containing the identifying data to the second retail entity, wherein the selected item is available for purchase from the second retail entity (see Siegel et al., ¶ 69); and outputting on the output device the item information obtained from the second retail entity, wherein the output device communicates the item information to a user while the user remains at the location of the first retail entity (see Siegel et al., ¶ 57-59). But fails to teach an input device for capturing an image of the selected item that contains identifying data associated with the selected item; a storage medium for storing said identifying data and program instructions for processing the image; and a processing unit communicatively coupled to the input device, the output device, and the storage medium, for executing the program instructions that process the image by obtaining the item information for the selected item by communicating the image containing the identifying data. However, Kinjo teaches an input device for capturing an image of the selected item that contains identifying data associated with the selected item (see Kinjo, ¶ 132-134); a storage medium for storing said identifying data and program instructions for processing the image; and a processing unit communicatively coupled to the input device, the output device, and the storage medium, for executing the program instructions that process the image by obtaining the item information for the selected item by communicating the image containing the identifying data (see Kinjo, ¶ 135-137). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Siegel et al. to an input device for capturing an image of the selected item that contains

identifying data associated with the selected item; a storage medium for storing said identifying data and program instructions for processing the image; and a processing unit communicatively coupled to the input device, the output device, and the storage medium, for executing the program instructions that process the image by obtaining the item information for the selected item by communicating the image containing the identifying data in order to provide an order processing apparatus and an image photographing device with which a customer can easily place an order corresponding to images displayed on a display medium (see Kinjo, ¶ 8).

24. As per claim 31, Siegel-Kinjo teach an apparatus, wherein the processing unit further executes program instructions that process the image by extracting the identifying data from the image (see Siegel et al., ¶ 48).

25. As per claim 32, Siegel-Kinjo teach an apparatus, wherein the identifying data is barcode data and the processing unit extracts the barcode data by executing a barcode recognition program that operates on the image (see Siegel et al., ¶ 28).

26. As per claim 33, the above-mentioned motivation of claim 30 applies fully in order to combine Siegel et al. and Kinjo. Siegel et al. and Kinjo teach an apparatus, wherein the identifying data is text data and the processing unit extracts the text data by executing an optical character recognition program that operates on the image (see Kinjo, ¶ 124).

27. As per claim 34, Siegel-Kinjo teach an apparatus, wherein the processing unit communicates the image to a server operated by the second retail entity at a location

remote from the first retail entity, wherein the server extracts the identifying data from the image (see Siegel et al., ¶ 54-55).

28. As per claim 35, Siegel-Kinjo teach an apparatus, wherein the item information for the selected item is obtained by retrieving item information from a database maintained on behalf of the second retail entity, wherein the item information corresponds to the identifying data for the selected item (see Siegel et al., ¶ 56-59).

29. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Siegel et al. and Kinjo as applied to claim 1 above, and further in view of Fitzsimmons, JR. (2002/0068991). Siegel et al. and Kinjo teach the mentioned limitations of claim 3 above and Kinjo furthermore teaches an imaging device (see Kinjo, ¶ 132-134) and Siegel et al. furthermore teaches item information communicated from the second retail entity to a scanning device (see Siegel et al., ¶ 57-59). But fail to teach a method, further comprising outputting the item information on an audio speaker of the imaging device. However, Fitzsimmons, JR. teaches a method, further comprising outputting the item information on an audio speaker of the imaging device (see Fitzsimmons, JR., ¶ 6). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Siegel et al. and Kinjo to a method, further comprising outputting the item information on an audio speaker of the imaging device in order to improve methods and apparatus for enriching the experience of a visitor to a display facility or other public space (see Fitzsimmons, JR. ¶ 5).

30. Claims 15-21, 23-28 have similar limitations as to claims 1-10, 12-14, 22, and 29-35 therefore, they are being rejected under the same rationale.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ranodhi Serrao whose telephone number is (571)272-7967. The examiner can normally be reached on 8:00-4:30pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571)272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/R. N. S./

Examiner, Art Unit 2141

2/19/2008

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